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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

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Docket # 2008-02
16 South Main Street
Millbury, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Millbury Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Charles F. Minney, V.F.W. Post 3329 (hereinafter referred to as the Appellant).

B) Procedural History

By written notice dated December 20, 2007 and received by the Appellant on December 20, 2007, the Town of Millbury Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the Order is located at 16 South Main Street, Millbury, MA. The Appellant filed an appeal of said Order on January 22, 2008. The parties attended a pre-hearing status conference on March 4, 2008. The board held a full hearing on this matter on June 10, 2008, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Vanessa Marsden, Manager, and Frank Rano, Past Commander, Post 3329. Appearing on behalf of the Millbury Fire Department was: Chief Matthew Belsito; Thomas Brown, Vice Chair, Millbury Board of Health; and Ronald P. DeSantis, Millbury Building Inspector.

Present for the Board were: Paul Donga, Vice Chairman; Alexander Macleod; Chief Thomas Coulombe; Peter Gibbons; John J. Mahan; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Millbury Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Application for Appeal
3. Order of Notice of the Millbury Fire Department
4. Notice of Pre-Hearing Status Conference to the Parties
5. Notice of Hearing to Appellant
6. Notice of Hearing to Millbury Fire Department
7. Copies of two Memoranda that accompany hearing notices
- 8A. Certificate of Inspection (expiration 12/31/2008)
- 8B. Inspection Checklist
- 8C. Application for Certificate of Inspection
9. Floor Plan (dated 5/29/2008)
10. Photographs of Interior (A-D)
11. Fire Department submissions (A-E)

E) Subsidiary Findings of Fact

- 1) By written notice dated December 20, 2007 and received by the Appellant on December 20, 2007, the Millbury Fire Department issued an Order of Notice to the Appellant requiring the installation of a system of automatic sprinklers in a building located at 16 South Main Street, Millbury, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. The Appellant filed an appeal of said Order on January 22, 2008.
- 2) The Appellant, the Charles F. Minney, V.F.W. Post 3329, operates a one level wood and masonry building with facilities for public assembly. A large portion of this building consists of a significant area described as the “function room.” There is also a smaller area known as the members lounge in addition to an office, storage area, kitchen, and members’ room.
- 3) The Certificate of Inspection issued by the Town of Millbury (expiration date of 12/31/2008) indicates a current use group classification of “A-2” with a total capacity of 325 persons throughout the facility. This capacity is broken down as follows: an occupant load of 200 persons for the “hall” and 125 persons for the “lounge.”
- 4) The members lounge area features a fully stocked bar, tables, chairs, karaoke machine and a dance floor. The establishment has a full liquor license, which allows it to serve all kinds of liquors daily from 11:00 a.m. to 1:00 a.m. The lounge portion of the facility is open on a routine basis for members, members’ guests and the general public. On weekends the

facility routinely provides Karaoke entertainment in the members' lounge area.

- 5) With respect to the main function area, the Appellant indicated that most functions are conducted by members and their families or are the result of a rental agreement booked pursuant to a written contract. There was testimony and documentation indicating that many of the events feature music by a disc jockey for dancing purposes. However, live bands are not allowed. The Appellant indicated that the lights in the function hall are capable of being dimmed but it is the practice of the organization not to do so on most occasions. The representatives of the Appellant testified that during events which feature music and dancing, a meal is the primary attraction. The representatives stated that most of the typical functions involve anniversaries, birthday parties, baby christenings and funeral collations. Appellants indicated that most hall rentals are usually under 100 persons, except for 2-3 events per year, which exceed 100 persons. They testified that bingo is held on most Monday nights and that alcohol is not allowed to be served during bingo events. It is Appellant's contention that the function area is not required to be sprinklered based upon prior decisions of this Board, which determined that certain establishments that feature "privately organized dining events" may not, under certain circumstances, be subject to the law.
- 6) According to the submitted written floor plan and Appellant's testimony, a solid wall exists, which clearly divides and delineates the main function hall portion of the building from the members' bar/lounge area. The lounge and the function areas have separate bar, bar service areas and rest rooms, which allow the function hall and the bar to operate independently. Both the function hall area and the bar area have separate occupant capacities and routes of egress. During function events it is management's policy to not allow entry to the members' bar and lounge (game room) from the function area and vice versa.
- 7) In support of the Millbury Fire Department's determination, Chief Belsito testified that it is his opinion that the facility should be required to install sprinklers for the following reasons: the current occupant load of the building is over 100 persons throughout the facility; the wall separating the members' bar/lounge and function hall is not a fire wall; the building currently has no smoke or heat alarms or pull stations; the construction of the building is wood frame; the existence of events such as bingo on Monday nights and Karaoke on Friday nights in the members' lounge; and the building's current use group classification is A-2.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states:
"every
building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 2) Based upon the most recent Certificate of Inspection and other evidence submitted to this

Board, this facility is an assembly occupancy with an occupant capacity of 100 persons or more which features a variety and combination of uses and activities. Clearly, the building contains a bar/lounge area, which features, on a routine basis, bar-like characteristics. However, this facility also features a function hall. Buildings that feature combined characteristics such as bar, function or restaurant are fairly common throughout the Commonwealth and present unique challenges in implementing the provisions of section 26G½. In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G½, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “Every ... building or structure ...or **portions thereof**, of public assembly **with a capacity of 100 persons or more** that is designed or used for occupancy as a nightclub, dancehall discotheque, bar or similar entertainment purposes...”. In determining whether the sprinkler requirement will apply in this case and other similar cases that involves a building, which features a combination of characteristics, the Legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly envisions an analysis of the building’s characteristics and floor plan to determine if a reasonable separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building, which may not be subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:

1. Is that portion of the building used or designed as a bar reasonably apportioned and separate from the other areas of the building? In determining this question there must be a sufficient physical separation that exists between the entertainment or bar portion from the rest of the building, which prevents the occupants or activities of the bar from expanding into the dining or function area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation, in an operational or business context that exists, which assures that the activities that occur in the bar, or entertainment area do not overflow or expand into the other areas.
 2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 3) Applying the above analysis to the characteristics of this establishment indicates that an adequate separation exists between the members’ bar/lounge portion and the function hall. The separation is in the form of a solid wall with doors that are capable of closing. Both the member’s lounge and the large function hall have independent bar service areas, a separate set of restrooms and independent means of egress. Additionally, the representatives for the Appellant indicated that it is the policy of the facility to keep the activities and occupancy of the bar/lounge area from expanding into the function hall and vice versa.

- 4) The portion of the building referred as the members' bar/lounge area is currently used and designed as a bar with an occupancy of 125 persons. This area is therefore clearly within scope of s. 26G½. Appellants failed to provide any evidence, which would contradict this finding. Appellants' statements and activity involving the possible alteration of this area and/or a reduction in capacity is, at this time, speculative and is therefore not subject to the consideration by this Board.
- 5) With respect to the function hall portion of the building, it appears that it is used and/or rented out on a routine basis for a variety of different events. The area has a capacity of 100 persons or over and many of these events feature music by DJ for dancing purposes. However, based upon the evidence, it appears that these events also feature a meal as the main attraction. Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded, in prior decisions, that under certain circumstances, a portion of a place of assembly, which provides facilities for "organized private dining events" may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of certain characteristics of such dining events is distinguishable from those that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The factors that are considered by this Board in such situations are as follows:
- a. The facility is used for events that feature a meal as the primary attraction.
 - b. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
 - c. Each event has a definite starting and ending time.
 - d. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
 - e. There are no significantly low lighting levels, and
 - f. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the "unconcentrated" Assembly Occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
 - g. The characteristics of the event, as referenced above, are strictly controlled by an on site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s. 26G½, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 6) The Board finds that the function area, as currently used and described to the Board, meets the 7 characteristics as stated above. Accordingly, the function area is not subject to the sprinkler requirements of s. 26G½, as long as the characteristics stated in section (F), paragraph (5), (a) through (g) continue to be met for all events that feature music and dancing or similar entertainment.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Millbury Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½.

The Appellant is hereby required to install an adequate system of automatic sprinklers in the members' lounge/bar, area including all means of egress and entrances thereto.

The Board finds that an adequate system of sprinklers is not required in the main function hall area, since the activities that occur within the function hall when music and dancing occur are considered "privately organized dining events" which feature a meal as the primary attraction. However, this determination is based upon the following conditions:

1. The continued use and operation of the establishment in a manner consistent with the findings herein, including, the continual maintenance of the physical and operational separation between activities of the function hall and the members' bar/lounge areas.
2. The establishment assures that the seven characteristics stated in Section (F) paragraph (5), (a) through (g), are consistently met for all events held in the function hall that feature music, dancing or similar entertainment activities, unless such events are of a temporary nature and held pursuant to a temporary permit issued by the head of the Fire Department in accordance with the provisions of M.G.L. c. 148, s. 26G½.
3. The Appellant shall install an adequate monitored fire alarm system throughout the facility that shall be connected to the Millbury Fire Department.

Plans for the installation of the sprinkler and alarm systems required by this determination shall be submitted to the Millbury Fire Department within 60 days of the receipt of this decision. Installation shall be completed no later than December 15, 2008.

H) Vote of the Board

Paul Donga, Vice Chairman	In Favor
Alexander Macleod	Not In Favor
Chief Thomas Coulombe	In Favor
Peter Gibbons	In Favor
John J. Mahan	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Paul Donga, Vice Chairman

Dated: August 6, 2008

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:

Vanessa Marsden, Manager
Charles F. Minney, V.F.W. Post 3329
16 South Main Street
Millbury, Massachusetts 01527

Chief Matthew Belsito
Millbury Fire Department
127 Elm Street
Millbury, Massachusetts 01527